

APR 14 1983

ALEXANDER L. STEVAS,  
CLERK

IN THE SUPREME COURT OF THE  
UNITED STATES  
OCTOBER TERM, 1982

No. 82-1536

LITTON SYSTEMS, INC.,  
Petitioner,

v.

JOHN BOYD CHASTAIN, JR.,  
Administrator of the Estate of  
MARILYN GAIL CHASTAIN, Deceased,  
Respondent.

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BRIEF FOR RESPONDENT  
In Opposition To Petition For Writ  
of Certiorari  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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Mr. Herbert L. Hyde  
Counsel for Respondent  
P. O. Box 7266  
Asheville, N. C. 28807  
Telephone: (704) 255-0975

Counsel of Record

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## SUMMARY OF ARGUMENT

The Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit should not be granted. That Court interpreted the state law of the State of North Carolina, not involving a federal question, and, ordinarily, the Supreme Court of the United States will not review the ruling of a Federal Court of Appeals interpreting state law. The Court of Appeals correctly stated the issue to be determined, contrary to the issue stated by Petitioner. The Court of Appeals then correctly interpreted state law.

### I.

No federal question is involved in this matter. The sole question is the interpretation of state law. Ordinarily the Supreme Court of the United States will not review

the ruling of a Federal Court of Appeals interpreting state law.

While by its express terms, Rule 17.1 of the Rules of the Supreme Court of the United States does not totally exclude discretionary review of a decision of a Federal Court of Appeals interpreting state law, neither does the Rule any longer expressly include such review within its terms. As a matter of practice, the Supreme Court of the United States has declined such review. It has wisely left such matters to the several Federal Courts of Appeal. Those Courts are closer to the scene and deal with such matters more often. They are likely to know more intimately the scope of state law within their jurisdiction and, dealing with such laws more often, are apt to interpret such laws, over a long period of time, more consistently with state Court interpretation.

## II.

Had the Court of Appeals agreed that the District Court correctly stated the issue, it may have reached a different result. But it did not so agree and it did not state the issue as the Petitioner has stated it. Petitioner ignores totally the fact that many genuine issues of fact arose, including the questions of liability under the doctrine of respondeat superior, whether the Petitioner, Litton was a social host, and the further questions of negligence, foreseeability, intervening negligence and proximate cause.

## III.

The Court of Appeals for the Fourth Circuit correctly interpreted state law. Having concluded what the issues were, the Court then correctly held that North Carolina subscribed to Sections 302 and 303 of the Restatement of Torts which holds the act of one to be negligent if the actor realizes or

should realize that it is likely to affect the conduct of another in such a manner as to create an unreasonable risk of harm to another. The Court of Appeals also correctly interpreted the law of North Carolina on foreseeability and intervening negligence.

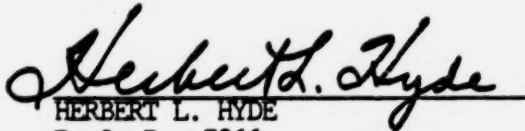
Having done so, that Court correctly held that genuine issues of material facts existed and that summary judgment was not appropriate. It did so without itself deciding many underlying issues of fact, including whether the employer, through its managers and supervisors, actually encouraged employees (who were present and being paid and had to be present to be paid) to become intoxicated, as alleged in the complaint, whether those managers and supervisors actually set the example of such intoxication and whether, contrary to Petitioners assertion in its stated issue, such activity was traditional, of long standing and in con-

formity with established company policy.

CONCLUSION

The Court of Appeals for the Fourth Circuit correctly stated the issue and correctly interpreted state law. No federal question is involved and the interpretation of state law by the Federal Court of Appeals should stand. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

A handwritten signature in cursive script, reading "Herbert L. Hyde", written over a horizontal line.

HERBERT L. HYDE  
P. O. Box 7266  
Asheville, N. C. 28807  
Telephone: (704) 255-0975

ATTORNEY FOR RESPONDENT

## CERTIFICATE OF SERVICE

Pursuant to Rule 28.5(c) of the United States Supreme Court, I hereby certify that on the 13th day of April, 1983, I caused hand-delivery by Purolator Courier Corporation from Richmond, Virginia, forty copies of the foregoing Brief for Respondent In Opposition to Petition for Writ of Certiorari to the Clerk of the United States Supreme Court and three copies to James F. Blue, III, Post Office Box 7096, Asheville, North Carolina 28807.

Susan S. Williams

Susan S. Williams  
Lawyers Printing Co., Inc.  
7th and Franklin Building  
Richmond, Virginia 23219

City of Richmond  
State of Virginia

Subscribed and sworn before me  
the 13th day of April, 1983.

Dail G. Giv

Notary Public

My Commission expires October 18, 1986